Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's Space Station Licensing Rules and Policies	)	IB Docket No. 02-34
	)	
2000 Biennial Regulatory Review - Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations	)	IB Docket No. 00-248

COMMENTS OF PANAMSAT CORPORATION

Henry Goldberg
Joseph A. Godles

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, N.W.
Washington, DC 20036
(202) 429-4900
Its Attorneys

June 3, 2002

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's Space Station Licensing Rules and Policies	)	IB Docket No. 02-34
	)	
2000 Biennial Regulatory Review - Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations	)	IB Docket No. 00-248

COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby comments on the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

In the NPRM, the Commission proposes to undertake a comprehensive evaluation of its rules and policies for space station licensing. PanAmSat applauds this effort.

PanAmSat owns and operates a global system comprised of C-band and Ku-band geostationary orbit ("GSO") fixed satellite service ("FSS") satellites. These comments principally address licensing issues concerning such satellites.[2]

When it comes to licensing policy, one size does not fit all. What works for GSO satellites may not work for NGSO satellites. What works for FSS satellites may not work for MSS satellites. And what works for some frequency bands may not work for

[1] FCC 02-45 (Feb. 28, 2002).
[2] PanAmSat also holds authorizations to launch and operate satellites in the Ka-band.

other frequency bands. In refining its space station licensing policy, the Commission should take these considerations into account.

C-band and Ku-band GSO satellites comprise a mature industry with a well-established regulatory regime. A large percentage of orbital locations are already spoken for when it comes to these bands, and most space station applications will be for replacements satellites or for new satellites that will supplement existing services in an incremental fashion. In this environment, it is particularly important that the Commission, through its replacement expectancy and other licensing policies, provide stability and predictability so as to encourage the investment needed to expand and improve existing services.

In the NPRM, the Commission seeks comment as to whether it should endeavor to improve its processing rounds system or, alternatively, should scrap processing rounds in favor of a first come, first served regime. PanAmSat favors processing rounds. Processing rounds are superior to first come, first served processing because they limit the applicant pool to entities that are qualified to build their systems and reasonably can be expected to do so. Processing rounds also deter and weed out speculators and applicants filing for anti-competitive reasons, both of which have free reign in a first come, first served system. First come, first served processing encourages a land rush for spectrum, without regard to qualifications.

Although first come, first served processing enables the Commission to issue licenses quickly, it merely substitutes greater speed at the front end for more delay and litigation at the back end. Granting licenses to all comers, however unqualified, makes it more likely that on the back end there will be legal disputes, which can drag on for months or years, as to whether milestones have been satisfied, creating uncertainty for the other applicants in the queue and freezing them in place with service proposals that may become outmoded as time passes.

Rather than scrapping processing rounds, the Commission should endeavor to improve them. It should facilitate prompt licensing decisions by weeding out prior to licensing applicants who lack financial qualifications or do not conform to the Commission's policies for initial and expansion satellites. It should initiate processing rounds promptly, and establish fixed periods for applicants to settle their differences and, failing that, for the Commission to assign orbital locations and frequencies. It should take advantage of the flexibility that its fungibility policy affords. And it should develop criteria it can apply so that, in the event there are more qualified applicants than orbital locations, it can make its licensing decisions in a timely manner.

The Commission also should adopt its proposals for streamlining the processing of replacement satellite applications. In furtherance of its policies in this area, moreover, and in order to provide predictability for incumbents and new entrants alike, the Commission should clarify the scope of its replacement satellite policy. It should state explicitly that replacement satellite applications are covered by this policy if they have higher power or more expansive coverage than the satellites they are replacing, or if they add expansion frequencies within an already-licensed band.

Once satellites are licensed, the Commission should see to it that they are constructed and placed into operation on time by enforcing its milestone requirements. Although PanAmSat sees no need for adopting additional milestones, it encourages the Commission to streamline enforcement of the milestone for entering into a non-contingent construction contract – the milestone that is virtually certain to be the one at issue if questions arise – by requiring that licensees file these contracts as a matter of course. PanAmSat also recommends that the Commission retain its anti-trafficking policy, and continue to apply it with due regard for commercial realities.

These policies should streamline the Commission's space station licensing efforts without introducing the risks of speculation, greenmail, blocking, and land rush that are associated with first come, first served licensing.

DISCUSSION

I. INTRODUCTION

The Commission has posed a basic choice between continuing the current processing round regime, with modifications to streamline and improve the process, and scrapping processing rounds in favor of a first come, first served approach.

A. First Come, First Served Proposal

If first come, first served is adopted, the Commission proposes to process only the first application that is filed in an acceptable form. Subsequently filed applications would be placed in a queue according to the date of filing. If the lead application cannot be granted or is dismissed, the Commission would begin consideration of the next application in the queue and so on. When there is a frequency allocation for a proposed service, but the Commission has not adopted service rules, it would identify the lead application and place all subsequently filed applications in a queue. When there is no international or domestic frequency allocation for a proposed service, the Commission would require interested parties to file their applications and the applications would remain pending until frequencies were allocated.

Under first come, first served, the Commission would endeavor to avoid mutual exclusivity either by determining to the nearest thousandth of a second which application came first or by imposing a mandatory sharing mechanism on competing applicants. The Commission also proposes to discourage frivolous or speculative applications by establishing a limit on the number of applications per frequency band that one can file and by adopting an attribution rule for purposes of determining how many applications one has pending.

B. Processing Round Proposal

As an alternative to first come, first served, the Commission seeks comment on streamlining its processing round procedures. Under this streamlined approach, applicants would have a fixed period of time, such as 60 days, to negotiate a plan to accommodate all applicants. If the parties could not agree on a plan, the Commission would determine which applicants should be given a preference based on specific criteria.

The Commission seeks comment as to whether one or more of the following should be among the criteria it applies: favoring new entrants, preferring satellite operators who have not missed milestones, giving a preference to applicants who have made more progress towards providing service, considering an applicant's commitment to provide service to rural or underserved areas, and giving a preference to the applicant who files first. Alternatively, the Commission suggests that it could apply a mandatory sharing mechanism, along the lines used to assign 2 GHz frequencies, by dividing the spectrum equally among qualified applicants if sufficient spectrum is not available to accommodate all requests. The Commission also proposes to eliminate its fungibility policy.

II. STREAMLINED PROCESSING ROUNDS ARE SUPERIOR TO FIRST COME, FIRST SERVED PROCESSING

PanAmSat urges the Commission not to adopt its first come, first served proposal and instead to adopt an improved processing round approach.

Processing rounds are superior to first come, first served processing because they limit the applicant pool to entities that are qualified to build their systems and reasonably can be expected to do so. It is to be expected that the most speculation and abuse of process will occur in a first come, first served system, in which the barriers to a license are at a minimum. Such a process encourages parties who file on speculation,

seek to block a competitor, or are hoping to extract greenmail.[3] In contrast, processing rounds deter and weed out speculators and applicants filing for anti-competitive reasons, particularly if the processing rounds are combined with meaningful qualifications criteria (*see* Section III, below).

The Commission's proposal to couple first come, first served processing with a limit on the number of applications one can file per frequency band will not cure its lack of effectiveness in deterring speculation. There is virtually no limit to the number of applications one can file in a first come, first served processing regime, even if an application cap is in place. If the limit is five applications per frequency band, an applicant whose interest is in speculation, blocking, or greenmail can file five applications on the first day first come, first served goes into effect. As soon as those applications are granted or denied, which should happen quickly if the first come, first served system is working the way it should, the applicant can file five more applications. Once those are granted or denied, it can file another five. In a first come first served system, application limits have little meaning.[4]

Of course, first come, first served processing has one obvious advantage over processing rounds. It enables the Commission to issue licenses quickly and with minimal effort. That advantage is illusory, however, because the process substitutes greater speed at the front end for more delay and litigation at the back end. The first come, first served process also gives short shrift to other values that the Commission is committed to serve, including the essence of any licensing regime, which is to assure

---

[3] Although the Commission employed first come, first served processing for a number of years for FM and television licenses, FM and television licensing are inherently different from space station licensing. FM radio and television are planned services, and the satellite service (other than the BSS service) is not. *See* NPRM, ¶ 31. In addition, ensuring that an applicant will have the wherewithal to satisfy milestones is a greater concern for space station licensees than for FM radio and television licensees, because space stations cost hundreds of millions of dollars to construct and launch.

[4] The Commission might be able to ameliorate this defect, in part, by limiting the number of applications that could be filed by companies repeatedly violating milestone requirements, but it could be years before such a requirement would have an impact on a speculative filer.

that service to the public commences in a timely manner and that spectrum is not warehoused.

Granting licenses to all comers, however unqualified, makes it more likely that on the back end there will be legal disputes, which can drag on for months or years, as to whether milestones have been satisfied, creating uncertainty for the other applicants in the queue and freezing them in place with service proposals that may become outmoded as time passes. These delays may advance the interests of those seeking to obstruct competitors or extract greenmail, but they are contrary to the public interest. The public is better served by selecting applicants initially that are qualified and likely to construct, even if additional effort is required at the outset to make these selections.

The Commission has experience with licensing regimes in which it abandoned its examination of qualifications at the outset and elevated speed over all other considerations. This experience has not always been a happy one. For example, in an attempt to simplify and speed up selection of licensees, the Commission used random selection as a licensing mechanism. This processing system encouraged widespread speculation, leading to the development of application mills that spawned litigation and enforcement actions, and almost destroyed the integrity of Commission licensing.

For another foreshadowing of what life might be like under first come, first served processing, the Commission need look no further than the ITU's procedures for assigning orbital location in the geostationary arc. The ITU also works on a first come, first served basis, giving priority to first filers and putting everyone else in a queue of sorts by requiring them to coordinate with the first filer. The result is that speculation is rampant, with some entities filing for more slots than they ever will need. Satellite operators who are serious about constructing but do not get to the ITU first are subject to greenmail and are faced with the Hobson's choice of abandoning their plans, even when they think that the first filer is a "paper satellite," or forging ahead and gambling hundreds of millions of dollars on the likelihood that the first filer will not bring an

orbital location into use. This system is universally acknowledged to be broken, even if agreement is lacking as to how to fix it.

Transition from the old regime to the new is another major issue for first come, first served processing. The transition will precipitate a land rush, because there will be an incentive to file at the first instant that first come, first served processing goes into effect. There will be pressure on satellite operators to make many filings as a defensive measure, even if they are uncertain whether they will make use of all the orbital locations for which they apply. Even with a limit of five applications per frequency band per company, the Commission can expect a landslide of applications, generating an instant backlog. Although the Commission proposes using first come, first served processing to avoid the need for filing windows, in practice the initial filing date under first come, first served would be one very large, virtually unmanageable, filing window.[5]

III. PROPOSALS FOR IMPROVED PROCESSING ROUNDS

All in all, processing rounds have worked very well and whatever problems the Commission has had with them can be resolved by improving, rather than scrapping, the system. PanAmSat supports many of the improvements proposed by the Commission and suggests additional ones below.

Along with its "open skies" policy, processing rounds have been the cornerstone of the Commission's licensing policies for domestic satellites from the outset, policies

---

[5] Although, in light of its opposition to first come, first served processing, PanAmSat is not commenting on every aspect of the Commission's first come, first served proposal, there are two elements of the proposal that PanAmSat is compelled to address. If the Commission were to treat amendments associated with mergers and transfers of control as major amendments causing applicants to lose their place in the processing line (*see* NPRM ¶ 53), it would be creating a major disincentive to legitimate business transactions. If such a policy had been in place over the last several years, the Hughes/PanAmSat, GE/Columbia, and SES/GE transactions either would not have occurred or would have triggered severely adverse consequences associated with the applications of the parties. And if the Commission were to place modification applications at the back of the queue if they conflict with pending new license applications (*see* NPRM ¶ 58), it would lock licensees into satellite designs that could become outmoded as technology and service requirements change.

that helped make the United States the world leader in the geostationary satellite field. Time after time, the Commission used processing rounds to assign orbital locations in the U.S. domestic arc to multiple applicants, giving rise to a vibrant and competitive industry. Processing rounds have proven to be a remarkably flexible tool for making these orbital assignments.

In recent times, the Commission has used processing rounds to license space stations in new services or new frequency bands. Little LEO systems (first and second round), Big LEO systems, 2 GHz systems, GSO Ka-band systems (first and second round), NGSO Ku-band systems, and NGSO Ka-band systems all have been or will be licensed using processing rounds.

The Commission is looking to revise its licensing procedures because "it can take several years to issue satellite licenses."[6] As the Commission has recognized, however, in many circumstances delays are unavoidable and have nothing to do with whether the Commission uses processing rounds or first come, first served processing. Rather, it reflects the fact that, for new satellite technologies, services and frequencies, it may be necessary to seek a new international allocation, establish a domestic frequency allocation plan, develop rules for intra-service and inter-service sharing, and propose and adopt service rules.[7] Multi-year timing for new services and frequencies is an unavoidable consequence of the complexities of this regime.[8]

---

[6] NPRM, ¶ 11.

[7] *See* NPRM, ¶ 24.

[8] A first come, first served processing regime also would leave the Commission ill-equipped to address the complexities of assigning feeder link and intersatellite link spectrum. When feeder link and intersatellite link spectrum is allocated for the exclusive use of a particular service, it should be subject to standard processing round selection. When the spectrum is shared by multiple services (*e.g.*, C-band or Ku-band FSS frequencies that are made available to MSS applicants for feeder links), the Commission needs to develop clear rules for when the spectrum can be used, and on what basis it will be coordinated. Simply assigning shared spectrum to the first applicant arriving on the Commission's doorstep will lead to inefficiencies, and could have a preclusive effect on valuable uses of the spectrum.

A. Time Limits

There is, of course, room for improvement in the processing round system. PanAmSat enthusiastically endorses the Commission's proposal to establish a limited period, such as 60 days, within which the parties could attempt to agree upon a plan that would accommodate all applicants. If this system had been in place in the second Ka-band processing round, the Commission could have adopted within a compressed time frame the orbital assignment plan it ultimately implemented.

In addition, PanAmSat recommends that the Commission establish a fixed time limit, such as one year, within which it will conclude processing rounds in the ordinary course. Providing certainty that processing rounds will be completed within a reasonable period facilitates business planning and furthers the goal of having service provided to the public in a timely fashion.

With time limits in place, there should be no need to await the outcome of one processing round before initiating a second one. Applicants filing after the cut-off date for a processing round apply with full knowledge that the disposition of their applications is subject to the outcome of the earlier round. A second round can proceed on a parallel path, with all steps taken short of the ultimate disposition of the applications, which must await completion of the first round.

B. Expansion Satellite Policy

PanAmSat also recommends that the Commission renew application of its expansion satellite policy.[9] Under this policy, applicants may be licensed initially for up to two orbital locations per frequency band per region. After an applicant has been licensed for its two initial slots, it may apply for one expansion satellite per frequency band per region in each new processing round.

---

[9] *See* 47 C.F.R. § 25.140(e), (f).

In several recent processing rounds, including first and second round Ka-band, the Commission has waived its expansion satellite policy because there were enough orbital locations to accommodate all applicants. In retrospect, PanAmSat believes that the Commission should not have waived the policy on this basis. Even when there is no mutual exclusivity, applying the expansion satellite policy is in the public interest because it ensures that satellite operators expand their systems in an orderly manner and preserves orbital locations for future entrants. Once again, looking at the Ka-band processing rounds, had the policy been applied in the first Ka-band processing round, licensing would have been a relatively simple exercise.

C. Fungibility

It is essential that the Commission continue to apply its fungibility policy in processing rounds. Fungibility is the *sine qua non* of processing rounds. Applicants lack advance knowledge of which orbital locations their competitors will apply for in a processing round. Fungibility gives the Commission the flexibility to match applicants and orbital locations when there are too many applicants for some slots and no applicants for others. Without this tool, the Commission would be forced to deny space station applications even though there are slots available to accommodate them.

Eliminating fungibility would increase the likelihood of mutual exclusivity. Absent fungibility, there would be mutual exclusivity whenever two or more applicants requested the same orbital location in a processing round. Dispensing with fungibility, therefore, would complicate processing rounds, not streamline them.

PanAmSat recognizes the concern, raised in the NPRM, that by virtue of the ITU backlog, it can be difficult to determine which orbital locations are encumbered by filings from other countries, and whether proposed satellite systems can be coordinated at particular orbital locations.[10] The fact that the information available from the ITU is

[10] NPRM, ¶ 80.

imperfect and outdated, however, does not warrant sacrificing the flexibility that the fungibility policy affords. Rather, the lack of perfect knowledge injects an element of arbitrariness that applicants must face regardless of whether the Commission retains its fungibility policy.

Without fungibility, an applicant may unknowingly select an orbital location that is encumbered by a non-U.S. ITU filing. With fungibility, the Commission may reassign an applicant from an orbital location that is so encumbered to one that is not. Absent complete and up-to-date information from the ITU, there simply is no way to know, and eliminating fungibility would do nothing to address this issue.

D. Selection Criteria

If the Commission establishes time limits, enforces its expansion satellite policy, takes advantage of the flexibility that the fungibility policy affords, and applies meaningful financial qualifications standards (*see* Section V, below), PanAmSat believes that there typically will be enough orbital locations, or spectrum, to avoid mutual exclusivity. History provides the best evidence on this point. The Commission is in its third decade of using processing rounds and has yet to conduct one in which it could not accommodate all applicants.

In the event that there is mutual exclusivity, the Commission has numerous tools at its disposal for resolving it. A number of possibilities are proposed in the NPRM, including favoring new entrants, giving preferences to satellite operators who have not missed milestones, giving preferences to applicants who have made more progress toward providing service, considering an applicant's commitment to providing service to rural or unserved areas, and giving a preference to the first filer.[11]

PanAmSat believes that the Commission can and should develop criteria such as these to apply if it lacks the orbital or spectrum resources to accommodate all

[11] *See* NPRM, ¶¶ 71-77.

applications. The Commission needs to recognize, however, that different factors may be relevant in different circumstances (*e.g.*, NGSO vs. GSO, MSS vs. FSS, new spectrum vs. infill), and it should not attempt to establish in advance the weight it will assign to particular factors. Each processing round has a life of its own, and the Commission should maximize its flexibility by resolving mutual exclusivity on a case-by-case basis.

One of the selection criteria that the Commission has proposed – mandatory sharing – has no place in licensing decisions for GSO FSS satellites. PanAmSat takes no position as to whether mandatory sharing should be used in the mobile satellite service, in which it may be possible to subdivide a band. Mandatory sharing for GSO FSS systems, however, is unworkable. GSO FSS operators cannot create viable business plans for operating satellites at orbital locations at which they will only have access to a fraction of the frequencies in a frequency band.

In the event, moreover, that the Commission decides to use as a factor whether applicants have missed milestones in the past, it should do so only on a prospective basis. An applicant who did not satisfy a milestone three years ago had no notice that a consequence of its action would be a demerit in a future licensing proceeding. It would be inequitable, and arguably a violation of due process, to introduce a penalty for actions that, at the time they were taken, were not subject to the penalty.

IV. THE COMMISSION SHOULD CLARIFY THE SCOPE OF ITS REPLACEMENT EXPECTANCY POLICY

In the NPRM, the Commission proposes to streamline processing for unopposed replacement satellite applications having technical characteristics that are consistent with those of the satellite that is to be retired.[12] These applications either would be stamped "granted" or would be deemed granted automatically a specified number of days after they appeared on public notice, in each case assuming no oppositions were filed. PanAmSat supports this proposal and has a modest preference for the public

[12] NPRM, ¶ 120.

notice procedure, because it will facilitate accurate record keeping concerning which replacement satellite applications have been granted on a routine basis, and when they have been granted.

In addition to streamlining its processing of replacement satellite applications, PanAmSat urges the Commission to clarify the elements of satellite design and operating characteristics that are covered by the replacement satellite policy. This policy is designed to encourage satellite operators to make the large investment that is necessary to construct, launch, and operate a satellite system, giving them a reasonable expectancy that, once they have made this investment and customers and the public have come to rely on that satellite network, they will be able to continue service in the future by launching replacement satellites.[13] Uncertainty as to the scope of the replacement expectancy undercuts this policy, because it discourages satellite operators from introducing innovations or otherwise improving service from one generation of satellites to the next for fear that the changes will not be covered by the expectancy. Uncertainty also invites legal disputes concerning whether a replacement satellite is covered by the expectancy, and therefore should be granted on a standalone basis, or is not covered by the expectancy, and therefore is subject to consideration in a processing round.

To eliminate this uncertainty, PanAmSat proposes that the Commission clarify that three types of changes are consistent with the replacement expectancy policy. First, satellite operators may increase power from one generation of satellites to the next without losing their replacement expectancy. Second, the operators may expand coverage from generation to generation. Third, the operators may add expansion frequencies within the same band (*e.g.*, adding expanded Ku-band frequencies when the operator already is using conventional Ku-band frequencies).

---

[13] *See* NPRM, ¶ 119.

Naturally, these changes would be subject to the Commission's standard policies concerning ITU coordination (*i.e.*, any grant is subject to the requirement that the licensee coordinate the proposed use) and frequency usage (*e.g.*, bands that are shared with the federal government may have to be coordinated with the federal government). By making these three clarifications, the Commission will encourage investment and innovation in replacement satellites.

V. THE COMMISSION SHOULD APPLY FINANCIAL QUALIFICATION STANDARDS

The Commission has invited parties to comment as to whether it should eliminate its financial qualifications standards. In lieu of financial standards, the Commission proposes to rely on "strenuous enforcement of … milestone requirements."[14]

PanAmSat opposes this proposal because financial standards serve an important function that is independent of, albeit related to, the Commission's milestones. Financial requirements provide an assurance that only applicants having the wherewithal to construct and launch their systems will be eligible for licensing.[15] Milestones are the fail-safe used at the end of the licensing process to ensure that licensees, whether they have the financial capability to construct and launch or not, follow through and bring their systems into use.

It is important for the Commission to have an assessment of financial capability at the outset. If the Commission relies only upon milestones to weed out parties who

---

[14] NPRM, ¶ 99.

[15] An applicant's financial capacity is a "significant factor" in determining whether it is qualified to hold a license. *Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 5948-5949 (1994). "[L]icensees without sufficient available resources spend a significant amount of time attempting to raise the necessary financing and . . . those attempts often end unsuccessfully." *Id.* (*citing National Exchange Satellite, Inc.*, 7 FCC Rcd 1990 (Com. Car. Bur. 1992); *Rainbow Satellite, Inc.*, Mimeo No. 2584 (Com. Car. Bur., Feb. 14, 1985); *United States Satellite Systems, Inc.*, Mimeo No. 2583 (Com. Car. Bur., Feb. 14, 1985). Because of this fact, "[a] financial requirement is in the public interest when . . . the Commission is authorizing a new service and does not want the implementation of service to the public unduly delayed." *See Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 4 FCC Rcd 6029, 6032 (1998).

lack financial qualifications, spectrum will be tied up unnecessarily and service to the public will be delayed needlessly. Milestones do not keep out speculators or applicants looking for greenmail, and they do not prevent unqualified applicants, except in the long run, from tying up spectrum resources.[16]

PanAmSat recognizes that there have been problems with implementing financial qualifications standards for space station applicants and, because of these problems, the Commission has gone to great lengths recently to waive or refrain from applying its financial qualifications policies. It may be time to reexamine these policies.

In any reexamination, the Commission should endeavor to strike a balance between two sometimes conflicting objectives: ensuring that applicants are financially capable without closing the door to applicants who can demonstrate progress but are unable to raise all necessary funds by the time they file their applications. One option would be to require that applicants demonstrate financing for a substantial portion (*e.g.*, 30 percent) of their costs when they file. The applicants also could be required to show financing for an additional portion of their costs within a specified period after they are licensed (*e.g.*, requiring a showing of financing for 50 percent of costs at the one year milestone). As an additional measure to facilitate entry by start up companies, the Commission could refrain from requiring a financial showing for new services or frequencies until the process for allocating frequencies internationally and domestically had been completed and the Commission had adopted service rules.

In any event, the Commission should either retain its present financial requirements policy or develop a new policy, to ensure that no applicant is licensed without a demonstration that there is a reasonable likelihood the applicant will be able to construct and launch its system.

---

[16] The Commission considers financial qualifications standards to be sufficiently important that it has argued, all the way to the Supreme Court, that they should take precedence over the bankruptcy laws. *See FCC v. NextWAVE Personal Communications Inc.*, *cert. granted,* _ U.S. _, 122 S. Ct. 1202, 152 L. Ed. 2d 141 (2002) (No. 01-653).

VI. THE COMMISSION SHOULD STREAMLINE ITS GSO MILESTONE ENFORCEMENT

The Commission seeks comment as to whether it should adopt interim or additional milestones to supplement the present milestone requirements for entering into a construction contract, launching a satellite, and placing a satellite into service. It also has asked for suggestions as to how its enforcement of milestones could be streamlined.

PanAmSat sees no need for interim or additional GSO milestones. The Commission already requires that applicants enter into a non-contingent contract within one year of licensing and, once that step has been taken, it is likely a satellite will be launched and placed into operation absent circumstances beyond a licensee's control. In virtually every case of which PanAmSat is aware in which the Commission revoked a license for failure to satisfy a milestone, the problem related to the requirement for a non-contingent contract, rather than the requirement to launch or place into operation.

With the changes that the ITU has instituted in the last several years, moreover, the time available to a GSO licensee already is fairly compressed. Satellite operators have only a five-year period within which they must make a due diligence showing that includes a certification that they have entered into a construction contract and a launch agreement. Absent unusual circumstances, operators must bring their networks into use within this same five year period. Moreover, because the ITU process begins around the time that an applicant files its FCC application rather than at the time the Commission issues a license, one or more years of the five-year ITU period already may have elapsed by the time a license is issued. Given all of these circumstances, additional milestones are unnecessary, would draw needlessly upon the resources of licensees and the Commission, and require that the Commission inject itself further into the relationships between satellite operators and their vendors.

There are measures, however, that the Commission can and should take to streamline enforcement of GSO milestones. The Commission can shorten the time needed to recover licenses that will not be implemented by requiring that licensees submit their construction contracts at the end of one year, rather than just certifying that they have entered into non-contingent contracts. Substantial time can elapse between the time that an applicant makes a certification and the time that the Commission, either on its own initiative or in response to a request from a third party, requires that a construction contract be filed. Eliminating this interim step, as the Commission already has in some cases (*e.g.*, first round Ka-band), will minimize delay.

VII. OTHER ISSUES

A. Timing for ITU Filings

There is one element of the space station licensing process that is not addressed in the NPRM, but that PanAmSat strongly encourages the Commission to consider. The Commission should forward advance publication information to the ITU on or about the time that a space station application is filed. In the increasingly competitive environment for orbital positions, timing is everything. Unless ITU filings are made promptly, non-U.S. operators monitoring FCC applications can leapfrog ahead of the United States in ITU priority. To avoid this result, the Commission should expedite the process for filing advance publication information.

B. Trafficking Rules

The Commission has asked whether there is a continuing need for its anti-trafficking rules, particularly if it strictly enforces space station milestones.[17] It has invited comment as to what rules would strike the appropriate balance between the competing goals of preventing unjust enrichment and expediting service to the public.

---

[17] NPRM, ¶ 117.

PanAmSat recommends that the Commission retain its anti-trafficking policy. PanAmSat believes that the rationale underlying the prohibition against trafficking remains valid, and that the policy should continue to be enforced.

It is important, however, that the Commission continue to apply the anti-trafficking policy flexibly, taking into account real world considerations. For example, the Commission has recognized that ownership changes that are incident to legitimate business transactions, or are entered into for financing purposes, should be permitted. It is also important that the Commission permit transactions to go forward in cases in which a licensee is not attempting to sell a bare license and has concrete assets to offer (*e.g.*, the licensee has made a substantial investment in a satellite that is under construction, but cannot secure financing to complete construction). Flexibility is critical to striking the appropriate balance between the competing goals that the Commission is attempting to reconcile.

CONCLUSION

In view of the foregoing, the Commission should strive to improve its processing round licensing regime for space stations, rather than replacing processing rounds with a first come, first served system, and it should clarify the scope of its replacement expectancy policy. To maintain the integrity of its space station licensing system, deter speculation and abuse, and discourage spectrum warehousing, the Commission also should continue to apply financial qualifications standards, retain an anti-trafficking policy that can be applied flexibly, and streamline its enforcement of GSO satellite milestones.

Respectfully submitted,

PANAMSAT CORPORATION

Henry Goldberg
Joseph A. Godles

GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, N.W.
Washington, DC 20036
(202) 429-4900
Its Attorneys

June 3, 2002